CURRENT DECISIONS

ALIENS—NATURALIZATION—LIMITATION OF TIME FOR FILING PETITION.—In 1905 Morena declared his intention under the law then in force to become a citizen of the United States and in 1914 he filed in court his petition for citizenship. The Act of June 29, 1906, c. 3592, 34 St. 596 (Comp. St. 1916, sec. 4362) provides (sec. 4) that "not less than two years nor more than seven years after he has made such declaration of intention he shall make and file in duplicate a petition" for citizenship. The old law contained no limitation as to the maximum interval which might elapse between the declaration and the final petition. *Held,* that an alien who made his declaration before the act of 1906 was required to file his petition not more than seven years after the date of the act. *United States v. Morena* (1918) 38 Sup. Ct. 151.

This decision sets at rest a point upon which the decisions of the lower federal courts were in conflict.

ALIEN ENEMIES—RIGHT TO SUE—SUSPENSION OF SUIT BY PARTNERSHIP HAVING ALIEN ENEMY MEMBER.—Action was brought by the plaintiffs, a partnership, to recover money due from the defendant. The plaintiffs' firm consisted of six members, of whom one was an alien enemy, but it appeared in the liquidation of the firm as constituted at the outbreak of the war that he was indebted to the partnership in a larger amount than his share of the sum involved in the suit. A motion to stay prosecution of the suit was granted and the plaintiffs appealed. *Held,* that no stay should have been granted. *Speyer Bros. v. Rodriguez* (1917, C. A.), noted in LAW JOURNAL (English) Dec. 1, 1917, p. 430.

The opinion states that the defendant's contention would in effect condemn all British subjects who had the misfortune at the outbreak of war to have an alien enemy partner to stand out of all moneys due to the firm at that date for an indefinite time, even though the alien enemy's share of those debts was small and there was no fear that he would during the war be able to handle it or derive any immediate benefit from it. See (1918) 27 YALE LAW JOURNAL, 420.

CONFLICT OF LAWS—EFFECT IN NEUTRAL COUNTRIES OF WAR EMERGENCY LEGISLATION OF BELLIGERENT COUNTRIES.—A German subject resident in Switzerland entered in 1900 into a contract of insurance with a French insurance company. In 1915 he removed to Germany, offering to pay in Switzerland the premium due. The French company refused to accept it on the ground that the French legislative decree of September 27, 1914, prohibited and declared void the performance of obligations contracted with and owing to or by subjects of Germany. The insured then brought an action in Switzerland to compel the French company to accept the premium. *Held,* that the action could be maintained, since the contract, having been concluded in Switzerland, was subject to Swiss law and the Swiss courts would not enforce in Switzerland war legislation of France, this being a matter of public and not of private law. *In re Cie. Nationale (French) v. Biermann (German)* (Supreme Court of Switzerland, Apr. 17, 1916) reported in (1917) 44 CLUNET 306.

This is in accordance with general principles of continental law by which a state will not enforce provisions of the public law of foreign countries not made a part of the original contract. *A fortiori,* it would seem that the courts

of a state should not enforce special legislation of a belligerent country in a struggle in which their country is neutral.

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF SELECTIVE DRAFT ACT.—The plaintiff in error, convicted of failing to present himself for registration in violation of the "selective draft act" of May 18, 1917, challenged the validity of the act. *Held,* that the act was constitutional. *Arver v. United States* (1918) 38 Sup. Ct. 159.

For a brief discussion of previous decisions by less authoritative courts to the same effect, see (1917) 27 YALE LAW JOURNAL, 133. The opinion of the Supreme Court is chiefly devoted to the general question of the power of Congress to provide for compulsory military service, which is upheld in the most positive terms as within the power expressly given by Art. I, sec. 8, of the Constitution "to raise and support armies." The court also disposes summarily of various minor objections to special features of the act, most of which were also raised in the previous cases above referred to.

CONSTITUTIONAL LAW—DUE PROCESS—PROHIBITING POSSESSION OF LIQUOR FOR PERSONAL USE.—A state statute (Idaho, Laws 1915, ch. 11) declares it unlawful for any person "to have in his possession any intoxicating liquors except as in this act provided." The defendant was arrested for having in his possession a bottle of whiskey for his own use. Contending that the statute violated the Fourteenth Amendment he sought by *habeas corpus* proceedings to obtain his discharge. The state court sustained the statute. The petitioner sued out a writ of error. *Held,* that the statute was constitutional. *Crane v. Campbell* (1917, U. S.) 38 Sup. Ct. 98.

Mr. Justice McReynolds's opinion states "that the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States which no state may abridge." The decision is one of first impression before the Supreme Court. There has been a conflict among state courts. See (1917) 27 YALE LAW JOURNAL, 286.

CONTRACTS—UNILATERAL—OFFER IRREVOCABLE AFTER PARTIAL ACCEPTANCE.—A landowner appointed the plaintiff as his sole agent to sell certain land, and agreed to sell on certain terms. He gave notice of revocation to the plaintiff while the latter was in treaty with a buyer. Later, the buyer agreed to the owner's terms, but the owner refused to sell. *Held,* that the offer to the agent was irrevocable after he had spent time, effort, and money in carrying out the owner's desires, and that the owner must pay the specified commission. *Braniff v. Blair* (1917, Kan.) 165 Pac. 816.

This is an application of the rule that an offer may become irrevocable prior to complete acceptance, where the requested acceptance is to consist of a number of acts requiring an appreciable length of time and effort or expense. See Arthur L. Corbin, *Offer and Acceptance, and Some of the Resulting Legal Relations* (1917) 26 YALE LAW JOURNAL, 169, 191-196, citing cases in accord and *contra.*

DAMAGES—MITIGATION—EXCESSIVE FREIGHT CHARGE PAID BY SHIPPER AND COLLECTED FROM CUSTOMERS.—The plaintiff lumber company paid excessive freight rates to the defendant carrier for transporting lumber and now seeks to recover the amount of such excess. The carrier contended that the plaintiff had suffered no damage because it had collected from its customers the amount of such excess freight rates. *Held,* that the defendant was liable for the difference between the reasonable rate and the excessive rate paid by

the plaintiff. *Southern Pac. Co. v. Darnell-Tanzer Lumber Co.* (Jan. 21, 1918) U. S. Sup. Ct., Oct. Term, No. 132.

The opinion by Mr. Justice Holmes contains the following: "The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law and it does not inquire into later events. . . . Probably in the end the public pays the damages in most cases of compensated torts."

FEDERAL COURTS—JURISDICTION—FINALTY OF JUDGMENT OF C. C. A.—The plaintiff brought suit in a state court against the carrier to recover damages for injuries to an interstate shipment of live stock. The suit was removed to the federal court on the sole ground of diversity of citizenship, and judgment for the plaintiff was affirmed by the Circuit Court of Appeals. A writ of error was taken to the Supreme Court. *Held,* that though the suit might have been removed from the state court on the ground that it arose under the laws of the United States (the Carmack Amendment to the Interstate Commerce Act being involved), nevertheless the judgment of the Circuit Court of Appeals was final, since the sole ground for removal set forth in the petition was diversity of citizenship; and that the writ of error must consequently be dismissed. White, C. J., *dissenting. Southern Pac. Co. v. Stewart* (1917, U. S.) 38 Sup. Ct. 130.

INSURANCE (ACCIDENT)—CONSTRUCTION OF POLICY—ACCIDENT INDUCING TUBERCULOSIS.—The insured held an accident policy of insurance against bodily injury sustained "through accidental means directly, independently and exclusively of all other causes." An accidentally sprained wrist resulted in permanent disability because of latent tuberculosis in the insured's system. The insurance company contended that the plaintiff's injury was not within the terms of the policy. *Held,* that the insurance company was liable. *Fidelity & Casualty Co. of N. Y. v. Mitchell* (P. C.) [1917] A. C. 592.

The court argues that "the accident had a double effect—it sprained the tendons and it induced the tuberculous condition. These two things acted together . . . ; but while they are both ingredients of the disabled condition, there has been and is, on the true construction of the policy, only one cause, namely, the accident."

INSURANCE (FIRE)—AVOIDANCE OF POLICY BY FRAUDULENT PROOF OF LOSS.—In an action to recover for a total loss of insured merchandise the company's defense was that the over-valuation in the sworn proof of loss was fraudulent and avoided the policy under the usual provision against false swearing. The plaintiff had access to his ledger showing the actual value of the goods, but over-stated their value by 25% to 50%. The trial court found the loss to be less than one-half the amount stated in the proof of loss and rendered judgment for the plaintiff. *Held,* that the judgment was erroneous as this evidence conclusively established a willful and fraudulent over-valuation, which precluded any recovery. *Dossett v. First Nat. Fire Ins. Co.* (1917, Tenn.) 198 S. W. 889.

The cases are not in accord as to how great the disproportion must be between the value as found by the jury and that stated in the proof of loss to lead the court to declare the existence of fraud established. Richards, *Insurance* (3d ed.) 313. In the principal case, however, the extent of the unexplained discrepancy between the plaintiff's own ledger and the proof of loss would seem consistent only with bad faith.

INTERNATIONAL LAW—CESSION OF TERRITORY—EFFECT UPON NATIONALITY OF INHABITANTS.—The plaintiff was born in 1881 in Dobritch, then in Bulgaria. In 1902 he removed to France permanently. In 1913 under the treaty of Bucharest terminating the second Balkan war, Dobritch, by a rectification of frontiers, was ceded to Rumania. Subsequently he had received Rumanian passports. The defendant objected to the prosecution of the suit on the ground that the plaintiff was of Bulgarian nationality, hence an alien enemy. *Held,* that the action could not be maintained. *Burgard v. Mair* (*Tribunal Civil de Saint Etienne,* June 7, 1916) reported in (1917) 44 CLUNET 193.

The opinion states that while birth in the territory conferred nationality, cession of the territory, being but a rectification of frontiers, did not change the nationality of those not actually domiciled in it, *i. e.,* of those domiciled abroad. It would seem that had it involved the cession of a geographical province or of a state, instead of a small undefined portion of territory, it might have carried with it a change of nationality of those born in it, even though domiciled abroad. No other case presenting the same problem has been found in the reports or literature examined.

INTERNATIONAL LAW—MILITARY OCCUPATION OF ENEMY TERRITORY—SUBSTITUTION OF AUTHORITY OF OCCUPANT.—The defendant, who was arrested in a part of Russian Poland occupied by Germany, was tried in Germany. He claimed that he was held illegally, having been taken into Germany without extradition proceedings and without consent of the Russian authorities. *Held,* that his arrest and trial were lawful, because while occupied enemy territory remains enemy and does not become national territory by the occupation, the occupant exercises jurisdiction therein in matters of public law in substitution for the replaced authority of the original sovereign and this jurisdiction warrants the arrest of criminal offenders there and their trial in the national courts of the occupant without any necessity for extradition proceedings. *Judgment IV. 407/15* (Supreme Court of Germany in Criminal Cases, July 26, 1915) reported in (1916) 21 DEUTSCHE JURISTENZEITUNG 134, also reported in (1917) 44 CLUNET 260.

STATUTE OF FRAUDS—PART PERFORMANCE—PAYMENT OF RENT IN ADVANCE.—The defendant made a verbal agreement to grant a lease of a farm to the plaintiff. The latter, who had not taken possession of the farm, paid an installment of rent in advance. In an action for specific performance of the agreement the defendant pleaded the Statute of Frauds. *Held,* that the payment of rent without taking possession did not remove the case from the operation of the Statute. *Chaprione v. Lambert* (C. A.) [1917] 2 Ch. 356.

This is the first decision on the point in the English Court of Appeals and follows and approves *Thursly v. Eccles* (1900) 49 W. R. 281. It has, of course, been long settled that the mere payment of the purchase price is not a sufficient act of part performance to entitle the purchaser to specific performance of an oral contract.

TELEGRAPHS AND TELEPHONES—DISCRIMINATION—EXCHANGE OF SERVICES WITH RAILROAD.—In 1888 the defendant telegraph company contracted for an exchange of services with the plaintiff railroad company. The contract provided for two kinds of service by the telegraph company, "on-line" service, being the carrying of messages for the railroad company along the common line of the two companies, and "off-line" service, being the carrying of messages to points beyond the line of the railroad. The 1910 amendment to the Interstate Commerce Act brought telegraph companies within the operation of the

Act and forbad discrimination, with a proviso that nothing in the Act should prevent telegraph companies from entering into contracts with common carriers for the exchange of services. Thereafter the telegraph company refused to convey "off-line" messages at less than its rates to the general public. The plaintiff sought to compel the defendant to perform its contract. *Held,* that the contract was invalid as to "off-line service" at less than the rates to the public. *Chicago G. W. R. R. Co. v. Postal Telegraph Cable Co.* (1917, N. D. Ill.) 245 Fed. 592.

The opinion contains a careful review of the legislation and authorities bearing on the point. A contrary ruling was made in *Baltimore & Ohio R. R. Co. v. Western U. T. Co.* (1917, S. D., N. Y.) 241 Fed. 162,—a decision which is said in the principal case to have been affirmed by the Circuit Court of Appeals for the Second District.

TORTS—LABOR UNIONS—INJUNCTION AGAINST ATTEMPTING TO UNIONIZE MINE BY PEACEFUL MEANS.—The plaintiff, owner of a coal mine in West Virginia, asked an injunction to restrain the officers and agents of the United Mine Workers of America from taking steps to "unionize" the plaintiff's mine without its consent. The employees of the plaintiff were working under contracts permitting them to withdraw from the plaintiff's employ at any time, and on the understanding that if they joined the United Mine Workers they were to cease working for the plaintiff. The acts of the officers and agents of the union consisted in: (1) peacefully urging the plaintiff's employees to join or to agree to join the union; (2) getting those who agreed to join, but who had not formally joined, to remain at work and to conceal the fact that they had agreed to join; (3) certain acts described by the court as going beyond "mere persuasion" and amounting to "deception and abuse," "misrepresentation, deceptive statements, and threats of pecuniary loss," but not including intimidation or threats of physical injury. The jurisdiction of the federal court depended entirely upon diversity of citizenship. *Held,* that the acts of the defendants were illegal under the common law of West Virginia and should be enjoined. Brandeis, Holmes and Clarke, JJ., *dissenting. Hitchman Coal & Coke Co. v. Mitchell* (1917) 38 Sup. Ct. 65.

The decision reverses that of the United States Circuit Court of Appeals, reported in 214 Fed. 685, and with slight modifications restores that of the District Court, reported in 202 Fed. 512. A discussion of this case will appear next month.

WORKMEN'S COMPENSATION ACT—INJURY AGGRAVATING PREVIOUSLY EXISTING DISEASE.—The claimant broke his leg bone while engaged in a hazardous occupation in the employ of the defendant. He was previously afflicted with congenital syphilis, and the accident so aggravated the disease that he became totally blind. *Held,* that the claimant was not entitled to compensation for permanent total disability due to loss of eyesight, but only to compensation for the period during which the leg was disabled. *Borgsted v. Shults Bread Co.* (1917, App. Div.) 167 N. Y. Supp. 647.

Two judges dissented, in spite of the statement of Woodward, J., for the majority that "the purpose of the Workmen's Compensation Law was not to abrogate the divine law that the 'sins of the fathers shall be visited upon the sons, even to the third and fourth generation.'"

WORKMEN'S COMPENSATION ACT—INJURIES "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT"—EMPLOYEE INJURED WHILE ASLEEP.—The claimant was employed as a driver. After working on his wagon for several hours in cold weather he came inside and sat down near the boiler to wait until an adjacent

elevator was available for certain work he was required to do. While so waiting he fell asleep and a spark or the heat from the boiler fire set fire to his clothes and caused the burns for which compensation was sought. The respondent contended that the injury did not arise out of and in the course of employment. *Held,* that the claimant was entitled to compensation. *Richards v. Indianapolis Abattoir Co.* (1917, Conn.) 102 Atl. 604.

A night watchman employed by the defendant took a seat near an open doorway on the second floor of the defendant's building, "dozed off" and, while asleep, fell through the doorway and was killed. His widow filed a claim under the Workmen's Compensation Act. An award in her favor was affirmed by the Appellate Division. *Held,* that the deceased's injury did not arise out of and in the course of his employment. *Gifford v. T. G. Patterson, Inc.* (1917, N. Y.) 117 N. E. 946.

The Connecticut opinion states that the accident happened while the employee was on duty at a place where he might reasonably be, and that the fact that he fell asleep was at most merely negligence, which under the Act did not defeat his claim. The lower New York court took a similar view of the night watchman's conduct (165 N. Y. Supp. 1043) but the Court of Appeals held that such a conclusion could not be justified because the watchman's conduct was directly contrary to the object of his employment.

WORKMEN'S COMPENSATION ACT—"PERSONAL INJURY BY ACCIDENT"—DISEASE.—The defendant furnished drinking water to the employees of his factory. The water became infected and the claimant thereby contracted typhoid fever and was temporarily disabled. The Minnesota Compensation Act provides for compensation for personal injury by accident, defining "accident" to be "an unexpected or unforseen event, happening suddenly or violently, . . . and producing at the time, injury to the physical structure of the body." *Held,* that the claimant's illness was not a personal injury by accident as defined in the statute. *State v. District Court* (1917, Minn.) 164 N. W. 810.

This case is noteworthy chiefly as calling attention to a commendable attempt in Minnesota to clear up by express statutory definition a question which has been left in doubt under other workmen's compensation acts. For a discussion of the general question with special reference to the Massachusetts act, see 27 YALE LAW JOURNAL, 144.